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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/325,278	10/26/1994	LARS BJORCK	216764	6124

7590 09/10/2003

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EXAMINER

MINNIFIELD, NITA M

ART UNIT PAPER NUMBER

1645

DATE MAILED: 09/10/2003

57

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	08/325,278	BJORCK ET AL.
Examiner	Art Unit	
N. M. Minnifield	1645	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 30 May 2003.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 14-19 and 21 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) 17 and 21 is/are allowed.

6) Claim(s) 14-16,18 and 19 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.

4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicants' amendment filed May 30, 2003 is acknowledged and has been entered. Claims 14 and 15 have been amended. Claims 14-19 and 21 are now pending in the present application. All rejections have been withdrawn in view of Applicants' amendment to the claims and/or comments with the exception of those discussed below.
  
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
  
3. Claims 14-16, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Kastern et al, 1990 in light of Sequence Search Result #2.

The claims are directed to proteins consisting essentially of SEQ ID NO: 1 or domains B1, B2, B3 or B4 (portions of SEQ ID NO: 1 as defined) in claim 14, a reagent kit and composition comprising the peptide and additive or carrier.

Kastern et al, 1990 disclose protein L, an immunoglobulin kappa light chain-binding protein that is expressed on the surface of *P. magnus* (abstract; p. 1217, column 1; p. 1221, column 1). Kastern et al disclose a reagent kit, the peptide and a detection reagent (materials and methods, p. 1217). Kastern et al disclose the cloning and sequence determination of the protein L (p. 1219, columns 1 and 2; figure 5). Kastern et al disclose the protein L in PBSA (materials and methods).

Attached Sequence Search Result #2 discloses that 99.7% match with the claimed SEQ ID NO: 1 and that it is set forth in the publication of Kastern et al, 1990.

With regard to claim 16, the binding to the various domains which bind to heavy chains of IgG chosen from (i), (ii), (iii), or (iv) would appear to be an inherent property since the domains are disclosed.

Since the Patent Office does not have the facilities for examining and comparing applicants' proteins with the proteins of the prior art reference, the burden is upon applicants to show a distinction between the material structural and functional characteristics of the claimed proteins and the proteins of the prior art. See In re Best, 562 F.2d 1252, 195 USPQ 430 (CCPA 1977) and In re Fitzgerald et al., 205 USPQ 594.

The rejection is maintained for the reasons of record. Applicant's arguments filed May 30, 2003 have been fully considered but they are not persuasive. Applicants' have asserted that Kastern et al 1990 does not the characterization of domains of protein L having the ability to bind to the light chains of immunoglobulins as identified in the present application, nor is there a characterization of protein L as a whole. However, it is noted that the sequence search report as previously attached (and additional sequence search results of the domains as defined in claim 14) show that Kastern et al does disclose the claimed sequences. The characterization of domains of protein L having the ability to bind to the light chains of immunoglobulins would appear to be an inherent property of these proteins or domains of protein L since Kastern et al 1990 discloses the protein. It is noted that the attached sequence search results of domains B1 (amino acids 5-80), B2 (amino acids 81-152), B3 (amino acids 153-224) and B4 (amino acids 225-296) are disclosed in Kastern et al 1990. Further, with regard to a hybrid protein as defined in claim 15, Kastern et al 1990 discloses that as well. It

is noted that the claim recites that the hybrid protein consists essentially of one or more of B1-B4 domains according to claim 14. Kastern et al 1990 discloses domains B1-B4, which would appear to be hybrids of any one or more B1-B4 domains.

4. No claims are allowed.
5. Claims 17 and 21 would appear to be free of the prior art.
6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. M. Minnifield whose telephone number is 703-305-3394. The examiner can normally be reached on M-F (8:00-5:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette R.F. Smith can be reached on 703-308-3909. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4556 for regular communications and 703-308-4556 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.



N. M. Minfield  
Primary Examiner

Art Unit 1645

NMM

September 7, 2003